REMARKS

Claims 1-25 are pending in the present application.

Applicant Again respectfully requests that the Examiner acknowledge the claim of priority and receipt of the certified priority documents, which were filed with the present application on January 9, 2002.

Claims 1, 2, 8, 9, 11, 13, 18, 24 and 25 have been amended to clarify the patentable subject matter recited therein. No new matter is added.

For example in claim 1 applicant's module storing information of a service level agreement for a user, including service levels substantially providable for a user, the service levels providable corresponding to the state of the traffic congestion.

Claims 1-25 are rejected under 35 U.S.C. 103 (a) as unpatentable over Pandya et al. (hereinafter Pandya) in view of Cook (U.S. 6,836,805). Applicant respectfully traverses.

Claim 1 relates to a providing service control device that includes storing information of a service level agreement for a user, showing service levels substantially providable for a user, the service levels providable corresponding to the state of the traffic congestion.

In the Office Action it is asserted that Pandya discloses the module storing information in column 13 lines 4-19 and element 138 in figure 9. However, there is no specific reference in this section storing information of a <u>service level agreement for</u> a user, <u>including service levels substitutionally providable</u> for the user, the service levels providable corresponding to the state of the traffic congestion, as recited in Applicant's claim.

The reference only describes that the element 138 provides messages of network conditions and can interface with other modules such as information management, reporting or operational support systems.

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There is no description of storing information of a <u>service level agreement for</u> a user and there is no description of the service level agreement including service levels substitutionally providable for the user depending on the state of the traffic congestion.

Pandya describes: "As suggested in the above discussion of traffic control module 132, popapp module 138 stores and is responsible for launching a variety of small application modules such as application 144, known as popapps, to perform various operations and enhance the functioning of the invented system. Popapps detect and diagnose network conditions such as downed resources, <u>provide specific messages to users and IT personnel regarding errors and network conditions, and interface with other information management, reporting or operational support systems</u>, such as policy managers, service level managers, and network and system management platforms." (emphasis added).

Claim 1 also recites a control module determining the substitutionally providable service for every user on the basis of the obtained performance information and the service level agreement, and having the corresponding service provided to a client terminal used by the user.

In the Office Action it is asserted that Cook discloses these features at col. 41, lines 15-34. A section of Cook was reproduced in the Office Action, however there was nothing in this section relating to determining the substitutionally providable service for every user <u>on the basis of the obtained performance information and the service level agreement</u>.

These features could not be found in Cook.

Further no motivation of combination of the references is provided. The Office Action only states on page 4 that the motivation is for "providing access to the access system in response to the determination that the user is allowed to use the access system." However this is unclear to applicant as it seems to have nothing to do with the claimed invention where the

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control module determining the substitutionally providable service for every [[the]] user on the basis of the obtained performance information and the <u>service level agreement</u>, and having the corresponding service provided to a client terminal used by the user.

Therefore applicant respectfully disagrees with the combination of references and the rejection for several reason including that the MPEP 2143 <u>requires</u> to establish a *prima facie* case of obviousness, three basic criteria must be met.

First, there must be <u>some suggestion or motivation</u>, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, <u>to modify the reference</u> or to combine reference teachings.

Second, there must be a reasonable <u>expectation of success</u>.

Finally, the prior art reference (or references when combined) **must teach or suggest all** the claim limitations.

This rejection fails on all three of the tests. First the references do not teach all the limitations as pointed out above.

Second the Office Action fails to point out where there is any motivation to make such a modification other that providing access to a system which is not related to applicant's claims. Applicant respectfully submits there is not motivation and applicant's own disclosure is being used as a road map in order to make this rejection. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Third there is no teaching anywhere that there would be a reasonable expectation of successfully modifying the teaching of the cited reference. Again only applicant's disclosure is being used to provide such a road map of success.

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Independent claims 9, 18, and 25 include features similar to those described above and are therefore allowable for at least the same reasons as claim 1 is allowable.
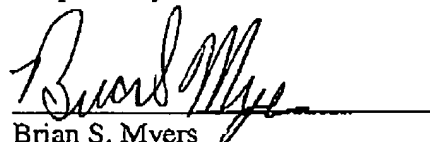
Claims 2-8, 10-17, and 19-24 depend from claims 1, 9, and 18, respectively, and are therefore allowable for at least the same reasons as claims 1, 9, and 18 are allowable.

CONCLUSION

In view of the remarks set forth above, this application is believed to be in condition for allowance which action is respectfully requested. However, if for any reason the Examiner should consider this application not to be in condition for allowance, the Examiner is respectfully requested to telephone the undersigned attorney at the number listed below prior to issuing a further Action.

Any fee due with this paper may be charged on Deposit Account 50-1290.

Respectfully submitted,

Brian S. Myers
Reg. No. 46,947

CUSTOMER NUMBER 026304

Telephone(212) 940-8800
Fax (212-940-8986
Docket No: 100794-00122 (FUJY 19.313)

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